



**NORTH DAKOTA
RETIREMENT AND
INVESTMENT OFFICE**

DIVORCE & YOUR TFFR RETIREMENT BENEFITS

This brochure is designed to give TFFR members, their spouses, and attorneys information to properly structure a Qualified Domestic Relations Order (QDRO) under North Dakota state law. The information in this brochure should not be considered legal advice. Since a divorce is a complicated procedure, each party in a divorce should consult with his or her own attorney.

What kind of a retirement plan is the North Dakota Teachers' Fund for Retirement (TFFR)?

TFFR is a qualified defined benefit public pension plan covered under Section 401(a) of the Internal Revenue Code (IRC). North Dakota Century Code (NDCC) Chapter 15-39.1 and Title 82 of the North Dakota Administrative Code contain the actual language governing the Fund. In simpler terms, your benefits are based on a formula that considers age, service credit and average salary. Your account balance has no bearing in determining your monthly retirement benefits. This is different from a defined contribution plan (like a 401k) which determines benefits based on a total account balance.

What happens to my retirement benefits if I get divorced?

Your pension from TFFR is generally considered a marital asset and is subject to valuation and division in a divorce. A court may order that your former spouse receive a portion of your retirement benefits. This can only be accomplished if the court order is filed and approved by the TFFR Board.

This approved order is known as a Qualified Domestic Relations Order (QDRO) and your former spouse is called an Alternate Payee.

Does this mean that the court can order a transfer of some of my retirement account balance to my former spouse?

Not necessarily. An alternate payee may only receive a lump sum payment if you elect a refund of your account value when you terminate TFFR-covered employment.

As a member of TFFR, do I need to have a domestic relations order as part of my divorce?

Depending on your particular financial situation, you may be able to address the division of your retirement account in another way, such as calculating the present value of your benefits and then dividing other property so you retain sole ownership of your retirement account. You should discuss this possibility with your attorney.

Will TFFR determine the present value of my future retirement benefits?

No. TFFR will provide you with your account balance and monthly benefits accrued as of the date of divorce. For computation of the present value of these benefits, you should consult an actuary, accountant, or other financial professional.

Can my retirement account information be disclosed to someone else?

To protect your privacy, all records relating to your TFFR account, account value, retirement, disability, and survivor application and benefits is confidential and is not a public record. The information and records may only be disclosed in writing to you or to the following:

- A person to whom you have given written consent.
- A person legally representing you.
- A person authorized by a court order.
- Limited information to participating employers, the Public Employees Retirement System, state and federal agencies, and member interest groups approved by the TFFR Board.

Consequently, your spouse or your attorney must have your written authorization or a court order to access your TFFR records.

At retirement, I plan to receive a monthly retirement benefit. Can the court order a lump sum payment be paid to an alternate payee?

No. If you elect a monthly payment, the alternate payee would also receive a monthly payment.

Does this mean the alternate payee can receive a part of my monthly benefit, and how does the payment affect my benefit?

Yes. The actuarial value of the amount paid to an alternate payee will reduce your monthly benefit. The reduction takes into consideration the value of future benefits and any benefits already paid to the alternate payee.

How will the amount paid to the alternate payee be determined?

The court may order a certain percentage or dollar amount of the accrued benefits as of the date of divorce be paid to the alternate payee.

Can my alternate payee begin receiving benefits while I continue to teach?

Yes. The alternate payee will elect a payment start date of one of the following:

- When the participating member reaches normal retirement (age 65 or Rule of 85 using only years of credit prior to divorce)
- When the participating member reaches early retirement (age 55)
- When the alternate payee reaches a certain date (must be after the member reaches age 55)
- When the participating member retires

If the member is already retired, the benefits to the alternate payee would begin upon receipt of the order signed by the judge and would be paid based on the retirement option initially selected.

If I remarry, when I retire will I still be eligible to elect a joint and survivor or term certain option?

Yes. The joint and survivor options and term certain options will be available.

As an active teacher with a QDRO on file with TFFR, what happens if the alternate payee or I pass away?

If the alternate payee passes away before beginning payment, the entire amount due the alternate payee would revert back to the member. If the death of the alternate payee occurs once benefits begin, payments would cease or continue to the alternate payee's beneficiary to complete a term certain option.

If you pass away prior to retirement, the alternate payee would receive a portion of the survivor benefits as of the date of divorce. The portion of survivor benefits is determined when the order is drafted. Keep in mind that your beneficiary at the time of death determines if the survivor benefit is paid as a lump sum or a monthly benefit.

As an alternate payee receiving a monthly benefit from TFFR, will I receive legislated retiree increases?

Yes. If benefit enhancements are approved by the North Dakota legislature, you would receive a portion of the benefit increase.

As an alternate payee, will I owe income tax on the benefits I receive from TFFR?

Yes. Federal and state income tax will be due on the taxable portion of your benefit. A small portion of your benefit may be non-taxable if the member paid in previously-taxed contributions. TFFR may withhold federal and North Dakota state income tax from your benefit. Each January you will receive a 1099R tax form.

Do I have to obtain pre-approval of a domestic relations order before the judge signs the order?

Yes. A qualified order must follow the model language outlined in Section 82-08-01-03 of the ND administrative code. The TFFR Board should approve it before it is presented to the judge for

signature. If we receive an order signed by the judge and changes to this order are needed, then the parties must return to court to modify the order.

May a QDRO be modified once approved?

Yes. However, it would take another signed court order to allow the change.

Can I obtain a valid QDRO for TFFR through an out-of-state divorce?

Yes, provided all of North Dakota's requirements for a valid QDRO are met.

How does my attorney or my former spouse's attorney prepare a Domestic Relations Order?

The member or the former spouse, with written authorization from the member, should request a copy of the QDRO model and a summary of the accrued benefits available as of the date of divorce. Since QDROs can become very costly, this information will allow all parties to be fully aware of the options and benefits available.

This brochure is a summary of NDCC 15-39.1-12.2 and NDAC 82-08 and is not intended to provide total information concerning QDROs. More detailed information may be obtained by contacting:

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